

E-filed on 11-17-06

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

**IN RE CYGNUS TELECOMMUNICATIONS
TECHNOLOGY, LLC, PATENT
LITIGATION**

No. MDL-1423
This Order Applies to All Actions

**THIS ORDER RELATES TO:
All Actions**

C-02-00142 RMW
C-02-00145 RMW
C-02-05437 RMW
C-03-03378 RMW
C-03-03594 RMW
C-03-03596 RMW
C-03-04003 RMW
C-04-03001 RMW
C-04-03365 RMW
C-04-04247 RMW
C-04-04359 RMW
C-06-03843 RMW
C-06-04295 RMW
C-06-06479 RMW

**ORDER DENYING DEFENDANTS'
MOTION TO DISMISS FOR LACK OF
SUBJECT-MATTER JURISDICTION**

24 Defendants assert that Cygnus does not own the patents-in-suit and move to dismiss these
25 consolidated actions for lack of subject-matter jurisdiction. Although troubled by the
26 inconsistencies in the evidence pertaining to the assignment of the patents to Cygnus, the court is
27 satisfied that Cygnus has shown by a preponderance of the evidence that the assignment set forth in
28 the September 1997 operating agreement is genuine. Cygnus's explanation that the representations

1 in Paragon's May 1998 petition to the Federal Circuit regarding the '984 application (case no. 98-
2 547) and Wyatt's April 1998 declaration filed with the PTO in connection with the '115 application
3 regarding Paragon's ownership of the applications occurred through inadvertence seems logical in
4 light of the facts that Cygnus paid the issuance fees for the patents and represented to the PTO that
5 an assignment had taken place, has acted as the owner of the patents since their issuance, and the
6 September 1997 assignment was between entities both controlled by Wyatt. However, since
7 Cygnus's counsel admittedly failed to record the assignment, failed to produce evidence of an
8 assignment until October 2006, and filed two documents stating that Paragon was the owner of the
9 patents after the date of the assignment, the court would consider a motion for reasonable fees and
10 expenses incurred by defendants in pursuit of this motion. The motion to dismiss is denied.

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13 DATED: 11/17/06

RONALD M. WHYTE
United States District Judge

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1 **A copy of this order was mailed on _____ to:**

2 **Counsel for Plaintiff:**

3 John P. Sutton
4 2421 Pierce Street
5 San Francisco, CA 94115-1131

6 **Counsel for Defendants:**

7 Alan M. Weisberg, Steven M. Greenberg
8 Christopher & Weisberg, P.A.
9 200 E. Las Olas Avenue
10 Suite 2040
11 Fort Lauderdale, FL 33301

12 John C. Carey
13 Rodriguez Greenberg & Paul
14 1395 Brickell Ave, Suite 700
15 Miami, FL 33131

16 Felice B. Galant, Gregory B. Wood
17 Fulbright & Jaworski L.L.P.
18 865 South Figueroa Street
19 Twenty-Ninth Floor
20 Los Angeles, CA 90017

21 Joseph P. Zammit
22 Fulbright & Jaworski
23 666 Fifth Avenue
24 New York, NY 10103

25 John F. Mardula, Jon L. Roberts
26 Roberts Mardula & Wertheim, LLC
27 11800 Sunrise Valley Drive
28 Suite 1000
Reston, VA 20191-5302

Richard B. Sheldon
Mitchell Silberberg & Knupp LLP
11377 West Olympic Boulevard
Los Angeles, CA 90064-1683

Jeffrey L. Silvestrini, Brian F. Roberts
Cohne Rappaport & Segal
P.O. Box 11008
Salt Lake City, UT 84147-0008

Raymond J. Etcheverry
Parsons, Behle & Latimer
One Utah Center
201 South Main Street,
Suite 1800, Post Office Box 45898
Salt Lake City, UT 84145

Kieran Patrick Fallon
436 SW 8th Street
Miami, FL 33130-2814

Matthew Francis McGahren
Baum & McGahren
6171 Crooked Creek Road
Norcross, GA 30092

Lori D. Greendorfer, Maxim H. Waldbaum
Schiff Hardin LLP
623 Fifth Avenue
28th Floor
New York, NY 10022

Thomas T. Tamlyn
Yeskoo Hogan & Tamlyn, LLP
535 Fifth Avenue
New York, NY 10017

Peter S. Canelias
Law Offices of Peter S. Canelias
420 Lexington Avenue
Suite 2148
New York, NY 10170

Elizabeth E. Green, R. Scott Shuker
Gronek & Latham, LLP
390 N. Orange Avenue
Suite 600
Orlando, FL 32801

Gregory J. Nelson
Nelson & Roediger
3333 E Camelback Road, Suite 212
Phoenix, AZ 85018

Peter Neil Greenfeld
Greenfeld Law Group
3333 E Camelback Road, Suite 212
Phoenix, AZ 85018-2324

Matthew McGahren
Baum, McGahren & Chiu, LLC
6171 Crooked Creek Road
Norcross, GA 30092

1 **Courtesy Copy:**

2 Clerk of the Panel
3 Judicial Panel on Multidistrict Litigation
3 Thurgood Marshall Federal Judiciary Building
4 One Columbus Circle, N.E.
4 Room G-255, North Lobby
5 Washington, DC 20002-8004

6 Counsel is responsible for distributing copies of this order to co-counsel, as necessary.

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